

Appl. No. 09/614,489  
Amdt. Dated May 14, 2004  
Reply to Office Action of April 5, 2004

### REMARKS

Claims 29-52 were presented for examination. Claims 29-32, 35, 36, 41, 46, 48, 50, and 52 are herein amended. New claims 53-55 are herein added.

The Examiner's acknowledgement of the Information Disclosure Statement filed on Jan. 16, 2004 is noted with appreciation.

The Examiner rejected claims 29-31, 36-43, and 46-51 under 35 U.S.C. 102(e) as being anticipated by Tosey (U.S. Patent No. 6,392,990).

As a preliminary matter, the Applicant does not concede that Tosey has an effective date that is prior to the Applicant's date of invention. However, in order to move this case to allowance, the Applicant will now summarize a teleconference interview with the Examiner, where various deficiencies associated with Tosey were discussed.

On May 11, 2004, the Examiner granted the Applicant's attorney the courtesy of a telephonic interview. Two main points were discussed: (1) Tosey does not disclose or suggest issuing a query to one or more "managed network switches" on the network; and (2) Tosey does not disclose or suggest "receiving ... a request to be assigned an IP address" as recited in the Applicant's claims.

Rather, Tosey is directed to recovering transparently from a network interface failure. In particular, Tosey discloses a "network computing device" that includes redundant network interface cards connected with redundant cables. The network computing device itself maintains all knowledge of the required IP addressing and configuration details. When the network computing device determines that one of its redundant set of two or more communication interfaces is unable to continue operation, the network computing device performs an internal reorganization whose effect is to substitute one of the spare communication interfaces, and reconfigure this spare with the known IP address parameters of the communication interface which it is replacing. (e.g., Abstract; col. 4, line 61 to col. 5, line 3; col. 5, lines 32-39; figures 2, 3, 4a-b).

During the telephonic interview with the Examiner, and with regard to point 1, the Applicant noted that a "managed network switch" is a well-known term of art, and is also known to be distinct from other network elements such as hubs and routers, as indicated throughout the

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Applicant's specification (e.g., p. 23, lines 14-16; Figure 1). A managed network switch can be asked (queried) to identify which of its ports (if any) has previously received data from a device having a particular MAC or physical address. The answer provided by the managed network switch includes the identified port, if appropriate. By contrast, the only devices/items disclosed or suggested in Tosey are: network computing device, LAN, WAN, router, hub, and network interface card. None of these items is similar in purpose or function to that of a managed network switch.

The examiner found this explanation to be favorable in distinguishing the claimed invention over Tosey, and suggested two options for the Applicant. The first option suggested was to amend the claimed term "managed network switch" to be "managed Ethernet switch" to more distinctly define the claimed invention. The second option suggested by the Examiner was to add claim language directed to hubs and routers, so as to distinguish the claimed "managed network switch" from such devices. The Applicant has amended the claims per the Examiner's suggestions.

In particular, claims 29-51 have been amended to now recite "managed Ethernet switch." Also, claim 52 was amended to further define the one or more managed network switches as "being distinct from hubs and routers." New claims 53-55 recite this limitation as well. Thus, the Applicant submits that the claimed invention is patentably distinct from Tosey, which does not disclose or suggest a "managed Ethernet switch" or a "managed network switch ... distinct from hubs and routers." For at least these reasons, the Applicant respectfully requests the Examiner to withdraw his rejection.

With regard to point 2, the Examiner stated that Tosey discloses the receiving of a request to be assigned an IP address at col. 6, line 25 to col. 7 line 14. The Applicant respectfully disagrees with the Examiner, and maintains his position that this section of Tosey merely discusses how the network computing device 21 establishes "a list of potentially addressable peers" on its subnet, and how it performs a "communication link test" with at least one of those peers.

The first link test disclosed by Tosey is the ICMP or "ping" test, where the network computing device 21 generates and sends "specialized IP packets" to the target peer, which assumes the IP address of the peer device is *already assigned*. The second link test disclosed by

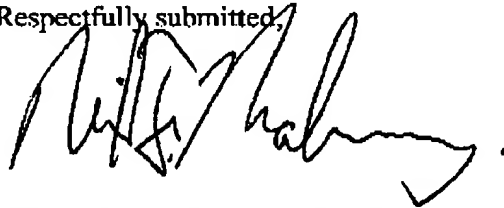
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Tosey uses the ARP messaging scheme, which also assumes the IP address of the target device is *already assigned*. The third link test disclosed by Tosey attempts to access a TCP or UDP port of a resource controlled by the peer, which may cause the peer to deny access. Such denial indicates the communication link to the peer is operational, but has nothing to do with assignment of an IP address.

If the computing device 21 receives a response (based on a link test) indicating that the targeted peer is operational, the computing device 21 then stores the already assigned IP address of that peer, thereby indicating its operational status. Note, however, that these discovery processes for determining the operational status of network devices disclosed by Tosey are simply not the same as the Applicant's claimed invention, where a target device requests assignment of an IP address. In order for Tosey to anticipate the claimed invention, Tosey must disclose or otherwise suggest each and every limitation recited in the claims. MPEP § 2131. Tosey fails to satisfy this standard.

The Applicant believes the above amendments and remarks to be fully responsive, thereby placing this application in condition for allowance. Favorable action is solicited. The Applicant kindly invites the Examiner to contact the undersigned attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



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